

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 10th day of August, two thousand and six.

PRESENT:

HON. JON O. NEWMAN,
HON. CHESTER J. STRAUB,
HON. ROBERT A. KATZMANN,
Circuit Judges.

Jun Qing Zhang,

Petitioner,

v.

No. 05-1680-ag
NAC

Alberto R. Gonzales,

Respondent.

FOR PETITIONER: Karen Jaffe, New York, New York.

FOR RESPONDENT: Lawrence J. Laurenzi, Acting United States Attorney for the Western District of Tennessee, Monica M. Simmons, Assistant United States Attorney, Memphis Tennessee.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition

for review is DENIED.

Jun Qing Zhang, through counsel, petitions for review of a decision of the Board of Immigration Appeals (“BIA”) denying his motion to reconsider. We assume the parties’ familiarity with the underlying facts and procedural history of the case.

This Court reviews the BIA’s denial of a motion to reconsider for abuse of discretion. *See Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2004) (per curiam); *Khouzam v. Ashcroft*, 361 F.3d 161, 165 (2d. Cir 2004). An abuse of discretion may be found where the BIA’s decision “provides no rational explanation, inexplicably departs from established policies, is devoid of any reasoning, or contains only summary or conclusory statements; that is to say, where the Board has acted in an arbitrary or capricious manner.” *Kaur*, 413 F.3d at 233-34; *Ke Zhen Zhao v. U.S. Dep’t of Justice*, 265 F.3d 83, 93 (2d Cir. 2001).

The BIA did not abuse its discretion in denying Zhang’s motion, which was filed in January 2005, as untimely. To the extent that Zhang's motion was a motion to reconsider the BIA's June 2002 decision denying his 2002 motion to reopen, it was filed well beyond the 30-day filing deadline under the regulations. *See* 8 C.F.R. § 1003.2(b)(2). To the extent that Zhang's motion was a motion to reopen the BIA's November 1998 decision denying his appeal, it was filed several years beyond the 90-day filing deadline. *See* 8 C.F.R. § 1003.2(c)(2). Moreover, Zhang did not argue in his motion that there were changed circumstances in China that would excuse the untimely filing of that motion, and the documentation he submitted did not demonstrate such circumstances. *See* 8 C.F.R. § 1003.2(c)(3)(ii).

For the foregoing reasons, the petition for review is DENIED. Having completed our review, Zhang’s pending motion for a stay of removal in this petition is DENIED as moot.

FOR THE COURT:

Roseann B. MacKechnie, Clerk

By: _____